

ELECTION

Applicant elects, with traverse, what the Examiner has characterized as “Invention I”, deemed drawn to welding, and corresponding to claims 1-13 and 21-52.

REMARKS

The Examiner has identified two ‘inventions’ in the pending claims. The Examiner’s classification of the ‘inventions’ include Invention I consisting of claims 1-13 and 21-52, drawn to welding and classified by the Examiner in class 219, subclass 74, and Invention II consisting of claims 14-20, drawn to an adapter and classified by the Examiner in class 285, subclass 148.22. Applicant respectfully disagrees and requests reconsideration.

In the Restriction Requirement, the Examiner states that “[t]he inventions are distinct, each from the other....” *Office Action, June 27, 2006, p. 2, sec. I.(II)*. However, the Examiner states that the inventions I and II are unrelated and applies MPEP 806.06, which pertains to independent inventions, not distinct inventions.

Nevertheless, Applicant respectfully disagrees with the Examiner’s conclusion that Inventions I and II are unrelated. As stated in MPEP §802.01.I, “[t]he term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more **>inventions claimed<, that is, they are unconnected in design, operation, *>**and**< effect*>.” (Emphasis added). Thus, the Examiner has the burden to show that the inventions are unconnected in (1) design, (2) operation and (3) effect. The Examiner stated that the Inventions I and II are unrelated because “[i]n the instant case, the different inventions are a welding device and an adapter for connecting gas cylinders.” *Office Action, supra at 2*. The Examiner’s assertion that Invention I is drawn to welding and that Invention II is drawn to an adapter followed by a statement that the Inventions are different merely because Invention I is a welding device and Invention II is an adaptor for connecting gas cylinders, does not satisfy the Examiner’s burden to show different designs, operations, and effects. A review of the subject matter of the two Inventions in its entirety clearly shows that the Examiner cannot show independent inventions. Accordingly, at least for the reasons set forth above, Applicant believes that the restriction between Inventions I and II is improper.

Additionally, the Examiner stated that the inventions are independent or distinct because they “require a different field of search”....” *Office Action, supra at 2*. As stated in MPEP 808.02, “[w]here the related inventions as claimed are shown to be >independent or< distinct

under the criteria of MPEP § 806.05(c) - *>§ 806.06<, the examiner, in order to establish reasons for insisting upon restriction, must >explain why there would be a serious burden on the examiner if restriction is not required.” In order to do so, the Examiner must show “by appropriate explanation” that, in this case, the inventions require a different field of search. *See id.* The Examiner has not met that burden here. Merely stating that a different field of search is required, without more, does not appropriately explain why there would be a serious burden on the Examiner if restriction is not required. A review of the subject matter shows that a different search is not required between inventions.

For all these reasons, Applicant respectfully requests rejoinder of claims 1-52. The Examiner is invited to call the undersigned to discuss this Election or any other matters regarding this application to further prosecution.

Respectfully submitted,

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Dated: July 27, 2006
Attorney Docket No.: ITW7510.060

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¹The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-2623. Should no proper payment be enclosed herewith, as by credit card authorization being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-2623. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extensions under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-2623. Please consider this a general authorization to charge any fee that is due in this case, if not otherwise timely paid, to Deposit Account No. 50-2623.